

Roxanne Gupta	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
	:	
v.	:	NO. 05-1921
	:	
	:	
Albright College	:	
	:	
Defendant.	:	

Presently pending is Defendant's Motion to Dismiss and Plaintiff's Reply thereto. For the following reasons, Defendant's Motion to Dismiss is denied.

The present case arises from the alleged discriminatory actions of Albright College that resulted in Roxanne Gupta's denial of tenure. Albright is a college in Pennsylvania and Plaintiff was an Assistant Professor on a tenure track of the college. Ms. Gupta applied for tenure at Albright College during the 2002-2003 academic year, and was denied tenure on May 22, 2003. Plaintiff alleges that the denial of tenure was the result of sex and religious discrimination by the College. She filed suit under both Title VII and Title IX. She claims to be entitled to relief under Title VII because of sex and religious discrimination and under Title IX because of gender discrimination.

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Defendant argues that Plaintiff's Title VII claim must be dismissed for failure to exhaust administrative remedies. Defendant secondly asserts that Title IX does not provide a private right of action and that Title VII preempts Plaintiff's Title IX claim and thus must be dismissed.

STANDARD OF REVIEW:

A court may dismiss a complaint for failure to state a cause of action only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Swierkiewicz v. Sorema N.A., 122 S.Ct. 992, 998 (2002) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73; 104 S. Ct. 2229 (1984)). The court "must take all the well pleaded allegations as true and construe the complaint in the light most favorable to the plaintiff." Colburn v. Upper Darby Twp., 838 F. 2d 663, 665-66 (3d Cir. 1988). The U.S. Supreme Court addressed the liberal pleading standards set forth in Fed. R. Civ. P. 8(a)(2), by stating that the Federal Rules of Civil Procedure only requires a "short and plain statement of the claim showing that the pleader is entitled to relief." Swierkiewicz 122 S. Ct. at 998-999. The Supreme Court further noted that the statement of facts must simply "give the defendant fair notice of what the Plaintiff's claim is and the grounds upon which it rests." Id at 998. (quoting Conley v. Gibson, 355 U.S. 41, 47, 76 S.Ct. 99 (1957)). Only notice pleading is required even when it may appear on the fact of the pleadings that a recovery is very remote and unlikely. See Swierkiewicz at 997-998. "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Id. at 997 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (U.S. 1974)) The Supreme Court further stated that the standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. Id at 998. The pleading standard is a liberal one and was

adopted to focus litigation on the merits of a claim. Id at 999. Therefore, Fed. R. Civ. Pro. 8(a) establishes a pleading standard without regard to whether a claim will succeed on the merits.

DISCUSSION:

TITLE VII CLAIMS:

Defendant alleges that Plaintiff's Title VII claims must be dismissed for failure to exhaust administrative remedies. In cases of unlawful employment practices, where there is a state or local agency with authority to grant relief, the charge must be filed, with the state or local agency, within three hundred (300) days after the alleged unlawful employment practice occurred. 42 USCS § 2000e-5. The Third Circuit has held that the time limits in Title VII are not jurisdictional but are instead like statutes of limitations and are subject to equitable tolling. Seitzinger v. Reading Hosp. & Med. Ctr., 165 F.3d 236, 240 (3d Cir. 1999). Under equitable tolling, a plaintiff may sue, after the statutory time period for filing an administrative claim with the appropriate agency has expired, if they have been prevented from filing in a timely manner due to sufficiently inequitable circumstances. Id. In the context of a Title VII claim, the Supreme Court has warned, that "[t]he principles of equitable tolling . . . do not extend to what is at best a garden variety claim of excusable neglect" by an attorney. Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96 (U.S. 1990.) However, the Third Circuit has held in cases where the attorney's "misbehavior [goes] well beyond the garden variety" equitable tolling may apply. Seitzinger at 241.

Title VII claims must be filed with the appropriate agency within 300 days of the time of the discriminatory act. In the present case, Albright College notified Plaintiff of her denial of tenure, in or around May 22, 2003. At the time, she was working, in Europe, for the College.

Plaintiff claimed that Defendant's actions were discriminatory and retained an attorney to represent her. However, the attorney did not file Ms. Gupta's claim, with the EEOC, until April 17 2004, after the 300-day deadline had expired. (Pl.'s Mem. in Opp'n at 14.)

The 300 day deadline is similar to a statute of limitations and may be equitably tolled if the attorney's "misbehavior [goes] well beyond the garden variety." Seitzinger at 241. Ms. Gupta claims that she completed an Allegations of Employment Discrimination form on November 10, 2003. She asserts that she remained in constant touch with the attorney who, she claims, assured her that he had filed her complaint with the EEOC in or around November 11, 2003. However, Plaintiff states that when she contacted the EEOC, on April 16, 2004, she was informed that no complaint had been filed on her behalf. Ms. Gupta's claim was filed with the EEOC on April 17, 2004. It appears that on April 20, 2004 her attorney was disbarred by the Pennsylvania Supreme Court, and thereafter, on April 23, 2004 the attorney committed suicide. Under the aforementioned circumstances the failure of the attorney to timely file is misbehavior "well beyond the garden variety." Under the circumstances, equity permits the statute of limitations to be tolled.

Accordingly Defendant's motion to dismiss Plaintiff's Title VII claim will be denied.

TITLE IX CLAIM:

Defendant claims that Plaintiff cannot sue the Defendant, pursuant to a Title IX claim. 20 USCS § 1681(a) provides, in pertinent part, that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." The Supreme Court has stated that " Title IX created a private right of action for the victims of

illegal discrimination...” Cannon v. University of Chicago, 441 U.S. 677, 703 (U.S. 1979.) The Court interpreted Title IX’s prohibition of sex discrimination to include “[e]mployees who directly participate in federal programs or who directly benefit from federal grants, loans or contracts.” See North Haven Board of Education et al. v. Bell, Secretary of Education, et al. 456 U.S. 512, 520 (1982.) Albright College is an educational institution. Ms. Gupta was employed, by Albright College, as an Assistant Professor on the tenure track. (Compl. At 2.) Albright College receives federal funds. The Supreme Court’s rulings in Cannon, North Haven and most recently Jackson v. Birmingham Board of Education imply a private right of action for employees of educational institutions that receive federal funds. See Jackson v. Birmingham Board of Education, 125 S. Ct. 1497 (2005.) As an employee of the College Ms. Gupta retains a private right of action under Title IX that at this time has not been held to be preempted by Title VII. Defendant’s Motion to Dismiss Plaintiff’s Title IX claim is denied.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Roxanne Gupta	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 05-1921
	:	
	:	
Albright College	:	
	:	
Defendants.	:	

ORDER

Presently pending is Defendant's Motion to Dismiss Plaintiff's Complaint, Plaintiff's Memorandum of Law in Opposition and Defendant's Reply to Response to Motion to Dismiss. **AND NOW** this _____ of January, 2006 upon consideration of Defendant's Motion to Dismiss, the legal memoranda submitted and Oral arguments presented by counsel for both parties **IT IS HEREBY ORDERED** that:

1. Defendant's Motion to Dismiss Plaintiff's Title IX claim is **DENIED**.
2. Defendant's Motion to Dismiss Defendant's Title VII claim is **DENIED**.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.